

806 KAR 15:010. Variable annuity contracts.

RELATES TO: KRS 304.7-240, 304.9-160, 304.15-390

STATUTORY AUTHORITY: KRS Chapter 13A, 304.2-110, 304.15-390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.15-390 provides that the commissioner may promulgate administrative regulations controlling the sale and issuance of variable contracts. This administrative regulation sets forth the requirements on variable annuity contracts.

Section 1. Scope and Definitions. (1) The term "variable contract," when used in this administrative regulation, shall mean any contract which provides for annuity benefits which vary according to the investment experience of any separate account or accounts maintained by the insurer as to such contract, as provided for in KRS 304.15-390.

(2) "Agent," when used in this administrative regulation, shall mean any person, corporation, partnership, or other legal entity which under the laws of this state is licensed as a life insurance agent.

Section 2. Qualification of Insurance Companies to Issue Variable Contracts. (1) No company shall deliver or issue for delivery variable contracts within this state unless:

(a) It is licensed or organized to do a life insurance or annuity business in this state; and

(b) The commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider, among other things:

1. The history and financial condition of the company;

2. The character, responsibility and fitness of the officers and directors of the company; and

3. The law and administrative regulation under which the company is authorized in the state of domicile to issue variable contracts.

(2) If the company is a subsidiary of an admitted life insurance company, or affiliated with such company by common management or ownership, it may be deemed by the commissioner to have satisfied the provisions of subsection (1)(b) of this section if either it or such admitted life company satisfies the aforementioned provisions; provided, further, that companies licensed and having a satisfactory record of doing business in this state for a period of at least three (3) years may be deemed to have satisfied the commissioner with respect to subsection (1)(b) of this section.

(3) Before any company shall deliver or issue for delivery variable contracts within this state it shall submit to the commissioner:

(a) A general description of the kinds of variable contracts it intends to issue.

(b) If requested by the commissioner, a copy of the statutes and administrative regulations of its state of domicile under which it is authorized to issue variable contracts; and

(c) If requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

Section 3. Separate Account or Separate Accounts. A domestic company issuing variable contracts shall establish one (1) or more separate accounts pursuant to KRS 304.15-390, subject to the following provisions of this section:

(1)(a) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in paragraph (b) of this subsection.

1. Amount allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state gov-

erning the investments of life insurance companies; and

2. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(b) Reserves for:

1. Benefits guaranteed as to dollar amount and duration; and

2. Funds guaranteed as to principal amount or stated rate of interest may be maintained in a separate account if a portion of the assets of such separate account at least equal to such reserve liability is invested in accordance with the laws and administrative regulations of this state governing the investments of life insurance companies. Such portion of the assets also shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(c) With respect to seventy-five (75) percent of the market value of the total assets in a separate account no company shall purchase or otherwise acquire the securities of any insurer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market would exceed ten (10) percent of the market value of the assets of said separate account; provided, however, that the executive director may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.

(d) Unless otherwise permitted by law or approved by the commissioner, no company shall purchase or otherwise acquire for its separate accounts the voting securities of any insurer if as a result of such acquisition the insurance company and its separate accounts, in the aggregate, will own more than ten (10) percent of the total issued and outstanding voting securities of such insurer; provided, that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interest in such accounts.

(e) The limitations provided in paragraphs (c) and (d) of this subsection shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with paragraphs (c) and (d) of this subsection.

(2) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the benefits and funds referred to in subsection (1)(b) of this section shall be valued in accordance with the rules otherwise applicable to the company's assets.

(3) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(4) Notwithstanding any other provisions of law a company may:

(a) With respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company; or

(b) With respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may

be elected to such membership by the vote of persons having interests in such account ratably as determined by the company. Such committee, board or other body may have the power, exercisable alone or in conjunction with others to manage such separate account and the investment of its assets.

(c) With respect to any separate account registered with the Securities and Exchange Commission, a company, committee, board or other body may make such other provisions as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect; provided that the commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.

(5) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one (1) or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account is made by a transfer of cash, or by a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the commissioner. The commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

(6) The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner.

(7) Rules under any provision of the insurance laws of this state or any administrative regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate accounts committee, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account shall receive directly or indirectly, any commissioner commission or any other compensation with respect to the purchase or sale of assets of such separate account.

Section 4. Filing of Contracts. The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and administrative regulations of this state with respect to individual and group life insurance and annuity contract form filings to the extent appropriate.

Section 5. Contracts Providing for Variable Benefits. (1) Any variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page a clear statement to the effect that the benefits thereunder are on a variable basis.

(2) Illustrations of benefits payable under any variable contract shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of benefits.

(3) No individual variable contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provision or provisions which in the opinion of the commissioner are more favorable to the holders of such contracts:

(a) A provision that there shall be a period of grace of thirty (30) days or of one (1) month, within

which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom;

(b) A provision that, at any time within three (3) years from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by the contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom;

(c) A provision specifying the options available in the event of default in a periodic stipulated payment. Such options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.

(4) Any variable contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the expense and mortality factors shall be stipulated in the contract.

(a) In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable contract:

1. The annual net investment increment assumption shall not exceed five (5) percent, except with the approval of the commissioner;

2. To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a lower life expectancy at any age, or, if approved by the commissioner, from another table.

(b) "Expense," as used this subsection, may exclude some or all taxes, as stipulated in the contract.

(5) The reserve liability for variable contracts shall be established pursuant to the requirements of the standard valuation law in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Section 6. Required Reports. (1) Any company issuing individual variable contracts shall mail to the contract holder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account. The company shall submit annually to the insurance commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

(2) Any company issuing individual variable contracts shall mail to the contract holder at least once in each contract year after the first at his last address known to the company, a statement reporting as of a date not more than four (4) months previous to the date of mailing, in the case of an annuity contract under which payments have not yet commenced:

(a) The number of accumulation units credited to such contract and the dollar value of a unit; or

(b) The value of the contract holder's account.

Section 7. Foreign Companies. If the law or administrative regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by this administrative regulation, the commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or administrative regulation as compliance with this administrative regulation.

Section 8. (1) No person shall be or act as an agent for the solicitation or sale of variable contracts except while duly appointed and licensed under the Kentucky Insurance Code as life insurance agent with respect to the insurer, and while meeting federal law requirements for dealing in securities.

(2) Any person doing business as agent under this section shall immediately report to the commissioner:

(a) The imposition of any disciplinary sanction (including, but not limited to, suspension or revocation of membership, suspension, revocation, or denial of registration) imposed upon such person by any national securities exchange, national securities association, or any federal, state, or territorial agency with jurisdiction over securities, variable annuities, or variable life insurance.

(b) Any judgment or injunction entered against such person on the basis of conduct deemed to have involved unfair, false, misleading, or deceptive practices, or violation of any securities law (whether statute or administrative regulation).

Section 9. Exemptions. This administrative regulation shall not apply to a deposit administration or similar contract pursuant to which a separate account is established in connection with the employee pension, retirement or profit-sharing plan of the insurer and/or its affiliates. (I-15.01; 1 Ky.R. 867; eff. 5-14-75; Am. 11 Ky.R. 261; 595; eff. 10-9-84; TAm eff. 8-9-2007; Crt eff. 2-26-2020; TAm eff. 3-10-2020.)